Supreme Court, U. S.
FILED
APR 3 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1979
No. 79-1307

DAVIS OIL COMPANY, *et al.*,

Petitioner,

vs.

A. B. PARVIN,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

PETITIONER'S REPLY MEMORANDUM.

IRWIN F. WOODLAND,
J. EDD STEPP, JR.,
RICHARD CHERNICK,
S. CRAIG TOMPKINS,
GIBSON, DUNN & CRUTCHER,
515 South Flower Street,
Los Angeles, Calif. 90071,
(213) 488-7240,

Attorneys for Petitioners Davis Oil Company, Jack Davis, Marvin Davis and Paul Messinger.

Parker & Son, Inc., Law Printers, Los Angeles. Phone 724-6622

SUBJECT INDEX

I

Page

Respondent's Argument Concerning the Propriety of the Ninth Circuit's Extraterritorial Application of the California Blue Sky Law Ignores the Opinions Below and Consists Primarily of Respondent's Interpretation of Disputed Fact 1

II

Contrary to Respondent's Assertions, the Disclaimer of a Partnership Relationship Does Not Simultaneously Disclaim the Existence of a Joint Venture Relationship 3

III

Respondent's Opposition Confuses Tests Used to Determine the Existence of a Security With Those Used to Determine the Existence of a Joint Venture 4

IV

Conclusion 5

TABLE OF AUTHORITIES CITED

Cases	Page
Cross v. Palsey, 270 F.2d 88 (8th Cir. 1959), cert. den'd. 362 U.S. 902	3
Keys v. Nimms, 43 Cal. App. 1, 184 P. 695	3
Nelson v. Abraham, 29 Cal. 2d 745, 177 P.2d 931 (1947)	3
Oakley v. Rosen, 76 Cal. App. 2d 310, 173 P.2d 55 (1946)	4
Stilwell v. Trutanich, 178 Cal. App. 2d 614, 3 Cal. Rptr. 285 (1960)	4
Vicioso v. Watson, 325 F.Supp. 1071 (C.D. Cal. 1971)	4
Textbook	
Nichols, Joint Venturers, 36 Virginia Law Review, pp. 423, 441-458 (1950)	3

IN THE

Supreme Court of the United States

October Term, 1979
No. 79-1307

DAVIS OIL COMPANY, *et al.*,

Petitioner,

vs.

A. B. PARVIN,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

PETITIONER'S REPLY MEMORANDUM.

I

Respondent's Argument Concerning the Propriety of the Ninth Circuit's Extraterritorial Application of the California Blue Sky Law Ignores the Opinions Below and Consists Primarily of Respondent's Interpretation of Disputed Fact.

Respondent's opposition on this issue may be reduced to one simple assertion, to wit: that the application of the California Blue Sky Law was appropriate as each of the three separate agreements was consummated and entered into in California. In support of this assertion, Respondent argues his interpretation of the facts below and presents assorted authorities speaking to (i) the creation of contractual relationships; and

(ii) the propriety of applying the California Blue Sky Law to a contract consummated and entered into in California.

In adopting the above-referenced approach, Respondent makes it appear as though substantial issues and precedents exist which were for some reason ignored by Petitioners. In fact, it is Respondent's approach which is profoundly mistaken and which completely misses the point. Petitioners do not contest that conflicting testimony was provided at trial as to whether each of the three agreements in question was consummated in California or Colorado. Nor do Petitioners contest the applicability of the California Blue Sky Law to agreements found to have been consummated and entered into in California. Rather, the Petition herein is founded upon the Ninth Circuit's holding that sufficient California contact existed to require application of the California Blue Sky Law, even in spite of the District Court's ruling that "the transactions were consummated and the contracts entered into outside of California." In the case of the Savoie agreement, this contact was the mailing of a check from California to Colorado. In the case of the Wildcat agreement, the contact was the signing in California of a form memorializing an agreement the terms of which were found by the District Court to have been negotiated and accepted in Colorado. These are the precedents which are at issue, not the District Court's findings that the Savoie and Wildcat agreements were consummated and entered into outside of California.

Respondent's arguments, founded as they are upon "facts" contrary to those found by the District Court and left untouched by the Ninth Circuit, are irrelevant. Accordingly, they were not discussed in the Petition for Writ of Certiorari.

II

Contrary to Respondent's Assertions, the Disclaimer of a Partnership Relationship Does Not Simultaneously Disclaim the Existence of a Joint Venture Relationship.

At page 13 of his Opposition, Respondent raises the issue of the partnership disclaimer contained in the parties' agreements. This disclaimer does not alter their relationship as joint venturers. Although there are many similarities between joint venturers and partnerships, they remain two different and distinct relationships. See, Nichols, *Joint Venturers,* 36 Virginia Law Review 423, 441-458 (1950). Differences between the two include limitations upon the joint venturer's power to bind the joint venturer and to act as the co-agent of his fellow joint venturers. *See, e.g., Keys v. Nimms,* 43 Cal. App. 1, 9, 184 P. 695. Furthermore, as noted in *Nelson v. Abraham,* 29 Cal. 2d 745, 177 P.2d 931 (1947):

> "[A] joint venture has no corporate or partnership designation. It is an undertaking by two or more persons jointly to carry out a single business enterprise for profit."
>
> *Nelson v. Abraham,* 29 Cal. 2d 745, 749, 177 P.2d 931.

Moroever, Respondent's reliance upon *Cross v. Palsey,* 270 F.2d 88 (8th Cir. 1959), *cert. den'd.* 362 U.S. 902, is misplaced, as the agreement therein specifically stated that it should not be construed as creating a joint venture.

III

Respondent's Opposition Confuses Tests Used to Determine the Existence of a Security With Those Used to Determine the Existence of a Joint Venture.

Respondent's so-called "test", set forth at page 15 of its Opposition, is not the test used to determine whether or not an agreement constitutes a joint venture in California. Rather, Respondent's "test" is the broader test used to determine whether or not an agreement constitutes a security. As an agreement may constitute a security and still be exempted as a joint venture, Respondent's purported "test" and the cases cited in support of it, are irrelevant. Accordingly, they were not addressed in the Petition. Respondent, in setting up his own purported "test" seeks to shift attention from cases such as *Vicioso v. Watson,* 325 F.Supp. 1071 (C.D Cal. 1971); *Stilwell v. Trutanich,* 178 Cal. App. 2d 614, 3 Cal. Rptr. 285 (1960); and *Oakley v. Rosen,* 76 Cal. App. 2d 310, 173 P.2d 55 (1946), which set forth the true California test, and which are unmentioned in Respondent's Opposition.

IV

Conclusion.

As shown above, Respondent's Opposition consists primarily of arguments designed to distract the Court and fails to directly address the issues raised by Petitioners in their Petition for Writ of Certiorari. Accordingly, for all the reasons set forth in the Petition, Petitioners respectfully submit that a Writ For Certiorari should issue.

Respectfully submitted,

IRWIN F. WOODLAND,
J. EDD STEPP, JR.,
RICHARD CHERNICK,
S. CRAIG TOMPKINS,
GIBSON, DUNN & CRUTCHER,

Attorneys for Petitioners Davis Oil Company, Jack Davis, Marvin Davis and Paul Messinger.